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ARIZONA ATTORNEY GENERAL

October 15, 1952
Op. No. 52-273

Honorable Wesley Bolin
Secretary of State
State House
Phoenix, Arizona

Dear Mr. Bolin:

This will acknowledge receipt of your letter of October 9, 1952, asking whether or not a ballot marked in ink should be counted by the election board.

Section 55-505, ACA 1939, as amended by Chapter 123, Twentieth Legislature, Second Regular Session, reads, so far as pertinent to your question, as follows:

"Voting Booths. The board of supervisors shall cause the polling place to be provided with a sufficient number of voting booths furnished with shelves on which voters may conveniently mark their ballots, screened from the observation of others, and such booths shall be supplied with such conveniences, including pencils, as will enable the voter to prepare his ballot for voting. * * *"
(Emphasis supplied)

Section 55-412, ACA 1939, "Instructions to Voters and Election Officers", so far as pertinent to your question, reads as follows:

"Cards of instructions--Contents--
Manner of voting--Posting.--

* * * * *

2. The voter will then repair to
a booth provided for that purpose,
and there mark or stamp his ballot.
* * * "(Emphasis supplied)

In the absence of any direction in the statute as to the mode in which the voter shall mark his ballot, the manner in which the voter is to indicate his wish is immaterial so long as his wish can be ascertained, but when the mode of indication is prescribed by authority of law, the form becomes a matter of substance. Whatever the statute requires as to form is mandatory and if the ballot is not marked as prescribed by law it is ineffectual for any purpose.

Under Section 55-505, supra, it is the duty of the Board of Supervisors to provide the polling places with a sufficient number of voting booths so that voters may conveniently mark their ballots and to furnish such conveniences as will enable the voter to prepare his ballot for voting.

"Convenience. Convenience is an elastic term, defined as meaning the state or character of being convenient, freedom from discomfort or trouble, that which gives ease or comfort or which is handy.
* * * " Chicago B. & Q. R. Co. v. Railroad Commission of Wisconsin,
237 U. S. 220, 50 L. Ed. 926;
American University v. Todd, Super.
1 A. 2d 595, 597.

Our Supreme Court, in the case of Prina v. Board of Supervisors, 16 Ariz. 252, said:

"The word 'convenient,' as defined by Webster, is 'fit, or adapted to an end; suitable; becoming; appropriate'; as used in our statute, supra, it qualifies the word 'number.' The word means, as used, 'a fit, suitable, or appropriate' number of election precincts, in order that the voters may have a reasonable opportunity to cast their votes.

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The precincts must have designated polling places, and the number of precincts must be sufficient to accommodate the needs of the voters in casting their votes. * * *

What conveniences are to be furnished the voting booths is left to the determination of the Board of Supervisors. When the Board has determined that question it must then furnish such booths with the necessary conveniences to enable a voter to prepare his ballot for voting.

From the reading of the above section and the cases cited and the definitions given by other jurisdictions of the word "convenience", it is our opinion that a voter may mark his ballot with ink, pencil or stamp if furnished by the Board of Supervisors.

Of course, there must be no mark by which the voter can be identified, and the mark indicating the voter's choice must be an "X".

Trusting the above answers your question satisfactorily, we are

Respectfully yours,

FRED O. WILSON
Attorney General

HAURICE BARTH
Assistant Attorney General

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